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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 111219777-1775-02]

RIN 0648-BB52

Fisheries of the Northeastern United States; Removal of Standardized Bycatch Reporting Methodology Regulations

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: This action removes regulations implementing the Northeast Region Standardized Bycatch Reporting Methodology (SBRM). To comply with the D.C. Circuit Court's decision, NMFS announces that the Northeast Region SBRM Omnibus Amendment is vacated and all regulations implemented by the SBRM Omnibus Amendment final rule are removed. The intended effect of this rule is to revise regulatory language to refer specifically to the industry-funded observer program in the scallop fishery.

DATES: Effective [Insert date 30 days after publication in the FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Douglas Potts, Fishery Policy Analyst, (978) 281-9341, fax (978) 281-9135.

SUPPLEMENTARY INFORMATION:

Background

On September 15, 2011, upon the order of the U.S. Court of Appeals for the District of Columbia Circuit, the U.S. District Court for the District of Columbia, in the case of Oceana, Inc. v. Locke (Civil Action No. 08-318), vacated the Northeast Region Standardized Bycatch Reporting Methodology (SBRM) Omnibus Amendment and remanded the case to NMFS for further proceedings consistent with the D.C. Circuit Court's decision. To comply with the ruling, NMFS announces that the Northeast Region SBRM Omnibus Amendment is vacated and all regulations implemented by the SBRM Omnibus Amendment final rule (73 FR 4736, January 28, 2008) are removed.

The removal of regulations implementing the SBRM Omnibus Amendment is not an exact reversal of the regulation amendatory instructions as written in the January 28, 2008, final rule. Some regulatory changes that occurred subsequent to the SBRM Omnibus Amendment final rule had to be accommodated. The final rule implementing the Annual Catch Limit and Accountability Measure Omnibus Amendment (76 FR 60606, September 29, 2011) reorganized the regulations for some species managed by the Mid-Atlantic Fishery Management Council and changed where SBRM provisions were located. In addition, the final rule implementing Amendment 11 to the Atlantic Sea Scallop Fishery Management Plan (FMP) (73 FR 20090, April 14, 2008) and the final rule implementing Amendment 3 to the Northeast Skate Complex FMP (75 FR 34049, June 16, 2010) inadvertently overwrote the SBRM provisions for those fisheries. Therefore, this action does not need to remove SBRM provisions in those two fisheries.

This action removes the SBRM section at § 648.18 and removes SBRM-related items from the lists of measures that can be changed through the FMP framework adjustment and/or annual specification process for the Atlantic mackerel, squid, and butterfish; Atlantic surfclam

and ocean quahog; Northeast multispecies, monkfish; summer flounder; scup; black sea bass; bluefish; Atlantic herring; spiny dogfish; deep-sea red crab; and tilefish fisheries. This action also makes changes to the regulations regarding observer service provider approval and responsibilities and observer certification. The SBRM Omnibus Amendment had authorized the development of an industry-funded observer program in any fishery, and the final rule modified regulatory language in these sections to apply broadly to any such program. This action revises that regulatory language to refer specifically to the industry-funded observer program in the scallop fishery, which existed prior to the adoption of the SBRM Omnibus Amendment.

Classification

The Assistant Administrator for Fisheries finds it is unnecessary, impracticable, and contrary to the public interest to provide for prior notice and an opportunity for public comment. This action is required by Court order and, therefore, NMFS has no discretion in implementing this rule. The September 15, 2011, Court order requires NMFS to vacate the SBRM Omnibus Amendment and the implementing regulations. Public comments will not affect the Court's order. Therefore, prior notice and the opportunity for public comment, pursuant to authority set forth at U.S.C. 553(b)(B), is unnecessary and impracticable because of the Court order.

This final rule is promulgated under NMFS' general rule making authority specified at 16 U.S.C. 1855(d), and is issued to bring the regulations into compliance with the U.S. District Court for the District of Columbia's order vacating the SBRM Omnibus Amendment.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

This rule is exempt from the procedures of the Regulatory Flexibility Act because the rule is issued without opportunity for prior notice and opportunity for public comment.

Accordingly, no initial regulatory flexibility analysis is required, and none has been prepared.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: December 22, 2011

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648--FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 et seq.

2. In § 648.11, paragraphs (h) and (i) are revised to read as follows:

§ 648.11 At-sea sea sampler/observer coverage.

* * * * *

(h) Observer service provider approval and responsibilities --(1) General. An entity seeking to provide observer services to the Atlantic sea scallop fishery must apply for and obtain approval from NMFS following submission of a complete application to The Observer Program Branch Chief, 25 Bernard St Jean Drive, East Falmouth, MA 02536. A list of approved observer service providers shall be distributed to scallop vessel owners and shall be posted on NMFS' Web page, as specified in paragraph (g)(4) of this section.

(2) [Reserved]

(3) Contents of application. An application to become an approved observer service provider shall contain the following:

(i) Identification of the management, organizational structure, and ownership structure of the applicant's business, including identification by name and general function of all controlling management interests in the company, including but not limited to owners, board members, officers, authorized agents, and staff. If the applicant is a corporation, the articles of incorporation must be provided. If the applicant is a partnership, the partnership agreement must be provided.

(ii) The permanent mailing address, phone and fax numbers where the owner(s) can be contacted for official correspondence, and the current physical location, business mailing address, business telephone and fax numbers, and business e-mail address for each office.

(iii) A statement, signed under penalty of perjury, from each owner or owners, board members, and officers, if a corporation, that they are free from a conflict of interest as described under paragraph (h)(6) of this section.

(iv) A statement, signed under penalty of perjury, from each owner or owners, board members, and officers, if a corporation, describing any criminal convictions, Federal contracts

they have had, and the performance rating they received on the contract, and previous decertification action while working as an observer or observer service provider.

(v) A description of any prior experience the applicant may have in placing individuals in remote field and/or marine work environments. This includes, but is not limited to, recruiting, hiring, deployment, and personnel administration.

(vi) A description of the applicant's ability to carry out the responsibilities and duties of a scallop fishery observer services provider as set out under paragraph (h)(5) of this section, and the arrangements to be used.

(vii) Evidence of holding adequate insurance to cover injury, liability, and accidental death for observers during their period of employment (including during training). Workers' Compensation and Maritime Employer's Liability insurance must be provided to cover the observer, vessel owner, and observer provider. The minimum coverage required is \$5 million. Observer service providers shall provide copies of the insurance policies to observers to display to the vessel owner, operator, or vessel manager, when requested.

(viii) Proof that its observers, either contracted or employed by the service provider, are compensated with salaries that meet or exceed the Department of Labor (DOL) guidelines for observers. Observers shall be compensated as Fair Labor Standards Act (FLSA) non-exempt employees. Observer providers shall provide any other benefits and personnel services in accordance with the terms of each observer's contract or employment status.

(ix) The names of its fully equipped, NMFS/NEFOP certified observers on staff or a list of its training candidates (with resumes) and a request for a NMFS/NEFOP Sea Scallop Observer Training class. The NEFOP training has a minimum class size of eight individuals, which may

be split among multiple vendors requesting training. Requests for training classes with fewer than eight individuals will be delayed until further requests make up the full training class size.

(x) An Emergency Action Plan (EAP) describing its response to an “at sea” emergency with an observer, including, but not limited to, personal injury, death, harassment, or intimidation.

(4) Application evaluation. (i) NMFS shall review and evaluate each application submitted under paragraphs (h)(2) and (h)(3) of this section. Issuance of approval as an observer provider shall be based on completeness of the application, and a determination by NMFS of the applicant's ability to perform the duties and responsibilities of a sea scallop fishery observer service provider, as demonstrated in the application information. A decision to approve or deny an application shall be made by NMFS within 15 days of receipt of the application by NMFS.

(ii) If NMFS approves the application, the observer service provider's name will be added to the list of approved observer service providers found on NMFS’ Web site specified in paragraph (g)(4) of this section, and in any outreach information to the industry. Approved observer service providers shall be notified in writing and provided with any information pertinent to its participation in the sea scallop fishery observer program.

(iii) An application shall be denied if NMFS determines that the information provided in the application is not complete or NMFS concludes that the applicant does not have the ability to perform the duties and responsibilities of a sea scallop fishery observer service provider. NMFS shall notify the applicant in writing of any deficiencies in the application or information submitted in support of the application. An applicant who receives a denial of his or her application may present additional information, in writing, to rectify the deficiencies specified in the written denial, provided such information is submitted to NMFS within 30 days of the

applicant's receipt of the denial notification from NMFS. In the absence of additional information, and after 30 days from an applicant's receipt of a denial, an observer provider is required to resubmit an application containing all of the information required under the application process specified in paragraph (h)(3) of this section to be re-considered for being added to the list of approved observer service providers.

(5) Responsibilities of observer service providers. (i) An observer service provider must provide observers certified by NMFS/NEFOP pursuant to paragraph (i) of this section for deployment in the sea scallop fishery when contacted and contracted by the owner, operator, or vessel manager of a vessel fishing in the scallop fishery, unless the observer service provider does not have an available observer within 48 hr of receiving a request for an observer from a vessel owner, operator, and/or manager, or refuses to deploy an observer on a requesting vessel for any of the reasons specified at paragraph (h)(5)(viii) of this section. An observer's first three deployments and the resulting data shall be immediately edited and approved after each trip, by NMFS/NEFOP, prior to any further deployments by that observer. If data quality is considered acceptable, the observer will be certified.

(ii) An observer service provider must provide to each of its observers:

(A) All necessary transportation, including arrangements and logistics, of observers to the initial location of deployment, to all subsequent vessel assignments, and to any debriefing locations, if necessary;

(B) Lodging, per diem, and any other services necessary for observers assigned to a scallop vessel or to attend a NMFS/NEFOP Sea Scallop Observer Training class;

(C) The required observer equipment, in accordance with equipment requirements listed on NMFS' Web site specified in paragraph (g)(4) of this section under the Sea Scallop Program, prior to any deployment and/or prior to NMFS observer certification training; and

(D) Individually assigned communication equipment, in working order, such as a cell phone or pager, for all necessary communication. An observer service provider may alternatively compensate observers for the use of the observer's personal cell phone or pager for communications made in support of, or necessary for, the observer's duties.

(iii) Observer deployment logistics. Each approved observer service provider must assign an available certified observer to a vessel upon request. Each approved observer service provider must provide for access by industry 24 hr per day, 7 days per week, to enable an owner, operator, or manager of a vessel to secure observer coverage when requested. The telephone system must be monitored a minimum of four times daily to ensure rapid response to industry requests. Observer service providers approved under paragraph (h) of this section are required to report observer deployments to NMFS daily for the purpose of determining whether the predetermined coverage levels are being achieved in the scallop fishery.

(iv) Observer deployment limitations. Unless alternative arrangements are approved by NMFS, an observer provider must not deploy any observer on the same vessel for more than two consecutive multi-day trips, and not more than twice in any given month for multi-day deployments.

(v) Communications with observers. An observer service provider must have an employee responsible for observer activities on call 24 hr a day to handle emergencies involving observers or problems concerning observer logistics, whenever observers are at sea, stationed shoreside, in transit, or in port awaiting vessel assignment.

(vi) Observer training requirements. The following information must be submitted to NMFS/NEFOP at least 7 days prior to the beginning of the proposed training class: A list of observer candidates; observer candidate resumes; and a statement signed by the candidate, under penalty of perjury, that discloses the candidate's criminal convictions, if any. All observer trainees must complete a basic cardiopulmonary resuscitation/first aid course prior to the end of a NMFS/NEFOP Sea Scallop Observer Training class. NMFS may reject a candidate for training if the candidate does not meet the minimum qualification requirements as outlined by NMFS/NEFOP Minimum Eligibility Standards for observers as described on the NMFS/NEFOP website.

(vii) Reports --(A) Observer deployment reports. The observer service provider must report to NMFS/NEFOP when, where, to whom, and to what fishery (open or closed area) an observer has been deployed, within 24 hr of the observer's departure. The observer service provider must ensure that the observer reports back to NMFS its Observer Contract (OBSCON) data, as described in the certified observer training, within 24 hr of landing. OBSCON data are to be submitted electronically or by other means as specified by NMFS. The observer service provider shall provide the raw (unedited) data collected by the observer to NMFS within 72 hr, which should be within 4 business days of the trip landing.

(B) Safety refusals. The observer service provider must report to NMFS any trip that has been refused due to safety issues, e.g., failure to hold a valid USCG Commercial Fishing Vessel Safety Examination Decal or to meet the safety requirements of the observer's pre-trip vessel safety checklist, within 24 hr of the refusal.

(C) Biological samples. The observer service provider must ensure that biological samples, including whole marine mammals, sea turtles, and sea birds, are stored/handled properly and transported to NMFS within 7 days of landing.

(D) Observer debriefing. The observer service provider must ensure that the observer remains available to NMFS, either in-person or via phone, at NMFS' discretion, including NMFS Office for Law Enforcement, for debriefing for at least 2 weeks following any observed trip. If requested by NMFS, an observer that is at sea during the 2-week period must contact NMFS upon his or her return.

(E) Observer availability report. The observer service provider must report to NMFS any occurrence of inability to respond to an industry request for observer coverage due to the lack of available observers by 5 p.m., Eastern Standard Time, of any day on which the provider is unable to respond to an industry request for observer coverage.

(F) Other reports. The observer provider must report possible observer harassment, discrimination, concerns about vessel safety or marine casualty, or observer illness or injury; and any information, allegations, or reports regarding observer conflict of interest or breach of the standards of behavior, to NMFS/NEFOP within 24 hr of the event or within 24 hr of learning of the event.

(G) Observer status report. Providers must provide NMFS/NEFOP with an updated list of contact information for all observers that includes the observer identification number, observer's name, mailing address, e-mail address, phone numbers, homeports or fisheries/trip types assigned, and must include whether or not the observer is "in service," indicating when the observer has requested leave and/or is not currently working for the industry funded program.

(H) Providers must submit to NMFS/NEFOP, if requested, a copy of each type of signed and valid contract (including all attachments, appendices, addendums, and exhibits incorporated into the contract) between the observer provider and those entities requiring observer services.

(I) Providers must submit to NMFS/NEFOP, if requested, a copy of each type of signed and valid contract (including all attachments, appendices, addendums, and exhibits incorporated into the contract) between the observer provider and specific observers.

(J) Providers must submit to NMFS/NEFOP, if requested, copies of any information developed and used by the observer providers distributed to vessels, such as informational pamphlets, payment notification, description of observer duties, etc.

(viii) Refusal to deploy an observer. (A) An observer service provider may refuse to deploy an observer on a requesting scallop vessel if the observer service provider does not have an available observer within 72 hr of receiving a request for an observer from a vessel.

(B) An observer service provider may refuse to deploy an observer on a requesting scallop vessel if the observer service provider has determined that the requesting vessel is inadequate or unsafe pursuant to the reasons described at §600.746.

(C) The observer service provider may refuse to deploy an observer on a scallop vessel that is otherwise eligible to carry an observer for any other reason, including failure to pay for previous observer deployments, provided the observer service provider has received prior written confirmation from NMFS authorizing such refusal.

(6) Limitations on conflict of interest. An observer service provider:

(i) Must not have a direct or indirect interest in a fishery managed under Federal regulations, including, but not limited to, a fishing vessel, fish dealer, fishery advocacy group, and/or fishery research;

(ii) Must assign observers without regard to any preference by representatives of vessels other than when an observer will be deployed; and

(iii) Must not solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from anyone who conducts fishing or fishing related activities that are regulated by NMFS, or who has interests that may be substantially affected by the performance or nonperformance of the official duties of observer providers.

(7) Removal of observer service provider from the list of approved observer service providers. An observer provider that fails to meet the requirements, conditions, and responsibilities specified in paragraphs (h)(5) and (h)(6) of this section shall be notified by NMFS, in writing, that it is subject to removal from the list of approved observer service providers. Such notification shall specify the reasons for the pending removal. An observer service provider that has received notification that it is subject to removal from the list of approved observer service providers may submit written information to rebut the reasons for removal from the list. Such rebuttal must be submitted within 30 days of notification received by the observer service provider that the observer service provider is subject to removal and must be accompanied by written evidence rebutting the basis for removal. NMFS shall review information rebutting the pending removal and shall notify the observer service provider within 15 days of receipt of the rebuttal whether or not the removal is warranted. If no response to a pending removal is received by NMFS within 30 days of the notification of removal, the observer service provider shall be automatically removed from the list of approved observer service providers. The decision to remove the observer service provider from the list, either after reviewing a rebuttal, or automatically if no timely rebuttal is submitted, shall be the final decision of the Department of Commerce. Removal from the list of approved observer service

providers does not necessarily prevent such observer service provider from obtaining an approval in the future if a new application is submitted that demonstrates that the reasons for removal are remedied. Certified observers under contract with an observer service provider that has been removed from the list of approved service providers must complete their assigned duties for any scallop trips on which the observers are deployed at the time the observer service provider is removed from the list of approved observer service providers. An observer service provider removed from the list of approved observer service providers is responsible for providing NMFS with the information required in paragraph (h)(5)(vii) of this section following completion of the trip. NMFS may consider, but is not limited to, the following in determining if an observer service provider may remain on the list of approved observer service providers:

- (i) Failure to meet the requirements, conditions, and responsibilities of observer service providers specified in paragraphs (h)(5) and (h)(6) of this section;

- (ii) Evidence of conflict of interest as defined under paragraph (h)(6) of this section;

- (iii) Evidence of criminal convictions related to:

- (A) Embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; or

- (B) The commission of any other crimes of dishonesty, as defined by state law or Federal law, that would seriously and directly affect the fitness of an applicant in providing observer services under this section;

- (iv) Unsatisfactory performance ratings on any Federal contracts held by the applicant;

and

- (v) Evidence of any history of decertification as either an observer or observer provider.

(i) Observer certification. (1) To be certified, employees or sub-contractors operating as observers for observer service providers approved under paragraph (h) of this section must meet NMFS National Minimum Eligibility Standards for observers. NMFS National Minimum Eligibility Standards are available at the National Observer Program website:

<http://www.st.nmfs.gov/st4/nop/>.

(2) Observer training. In order to be deployed on any scallop vessel, a candidate observer must have passed a NMFS/NEFOP Sea Scallop Fisheries Observer Training course. If a candidate fails training, the candidate shall be notified in writing on or before the last day of training. The notification will indicate the reasons the candidate failed the training. A candidate that fails training shall not be able to enroll in a subsequent class. Observer training shall include an observer training trip, as part of the observer's training, aboard a scallop vessel with a trainer. A certified observer's first deployment and the resulting data shall be immediately edited, and approved, by NMFS prior to any further deployments of that observer.

(3) Observer requirements. All observers must:

(i) Have a valid NMFS/NEFOP fisheries observer certification pursuant to paragraph (i)(1) of this section;

(ii) Be physically and mentally capable of carrying out the responsibilities of an observer on board scallop vessels, pursuant to standards established by NMFS. Such standards are available from NMFS/NEFOP website specified in paragraph (g)(4) of this section and shall be provided to each approved observer service provider;

(iii) Have successfully completed all NMFS-required training and briefings for observers before deployment, pursuant to paragraph (i)(2) of this section; and

(iv) Hold a current Red Cross (or equivalence) CPR/first aid certification.

(v) Observers must accurately record their sampling data, write complete reports, and report accurately any observations relevant to conservation of marine resources or their environment.

(4) Probation and decertification. NMFS has the authority to review observer certifications and issue observer certification probation and/or decertification as described in NMFS policy found on the Web site at: <http://www.nefsc.noaa.gov/femad/fsb/>.

(5) Issuance of decertification. Upon determination that decertification is warranted under paragraphs (i)(1) through (3) of this section, NMFS shall issue a written decision to decertify the observer to the observer and approved observer service provider via certified mail at the observer's most current address provided to NMFS. The decision shall identify whether a certification is revoked and shall identify the specific reasons for the action taken.

Decertification is effective immediately as of the date of issuance, unless the decertification official notes a compelling reason for maintaining certification for a specified period and under specified conditions. Decertification is the final decision of the Department of Commerce.

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§ 648.18 [Amended]

3. § 648.18 is removed and reserved.

§ 648.22 [Amended]

4. In § 648.22, paragraph (c)(13) is removed and reserved.

5. In § 648.25, paragraph (a)(1) is revised to read as follows:

§ 648.25 Atlantic Mackerel, squid, and butterfish framework adjustments to management measures.

(a) * * *

(1) Adjustment process. The MAFMC shall develop and analyze appropriate management actions over the span of at least two MAFMC meetings. The MAFMC must provide the public with advance notice of the availability of the recommendation(s), appropriate justification(s) and economic and biological analyses, and the opportunity to comment on the proposed adjustment(s) at the first meeting and prior to and at the second MAFMC meeting. The MAFMC's recommendations on adjustments or additions to management measures must come from one or more of the following categories: Adjustments within existing ABC control rule levels; adjustments to the existing MAFMC risk policy; introduction of new AMs, including sub-ACTs; minimum fish size; maximum fish size; gear restrictions; gear requirements or prohibitions; permitting restrictions, recreational possession limit; recreational seasons; closed areas; commercial seasons; commercial trip limits; commercial quota system, including commercial quota allocation procedure and possible quota set-asides to mitigate bycatch; recreational harvest limit; annual specification quota setting process; FMP Monitoring Committee composition and process; description and identification of EFH (and fishing gear management measures that impact EFH); description and identification of habitat areas of particular concern; overfishing definition and related thresholds and targets; regional gear restrictions; regional season restrictions (including option to split seasons); restrictions on vessel size (LOA and GRT) or shaft horsepower; any other management measures currently included in the FMP, set aside quota for scientific research, regional management, and process for inseason adjustment to the annual specification. Measures contained within this list that require significant departures from previously contemplated measures or that are otherwise introducing new concepts may require amendment of the FMP instead of a framework adjustment.

* * * * *

6. In § 648.79, paragraph (a)(1) is revised to read as follows:

§ 648.79 Surfclam and ocean quahog framework adjustments to management measures.

(a) * * *

(1) Adjustment process. The MAFMC shall develop and analyze appropriate management actions over the span of at least two MAFMC meetings. The MAFMC must provide the public with advance notice of the availability of the recommendation(s), appropriate justification(s) and economic and biological analyses, and the opportunity to comment on the proposed adjustment(s) at the first meeting, and prior to and at the second MAFMC meeting. The MAFMC's recommendations on adjustments or additions to management measures must come from one or more of the following categories: Adjustments within existing ABC control rule levels; adjustments to the existing MAFMC risk policy; introduction of new AMs, including sub-ACTs; description and identification of EFH (and fishing gear management measures that impact EFH); habitat areas of particular concern; set-aside quota for scientific research; VMS; OY range; and suspension or adjustment of the surfclam minimum size limit. Issues that require significant departures from previously contemplated measures or that are otherwise introducing new concepts may require an amendment of the FMP instead of a framework adjustment.

* * * * *

7. In § 648.90, paragraphs (a)(2)(i), (a)(2)(iii), (b)(1)(ii), and (c)(1)(i) are revised to read as follows:

§ 648.90 NE multispecies assessment, framework procedures and specifications, and flexible area action system.

* * * * *

(a) * * *

(2) Biennial review. (i) The NE multispecies PDT shall meet on or before September 30 every other year, unless otherwise specified in paragraph (a)(3) of this section, under the conditions specified in that paragraph, to perform a review of the fishery, using the most current scientific information available provided primarily from the NEFSC. Data provided by states, ASMFC, the USCG, and other sources may also be considered by the PDT. Based on this review, the PDT will develop ACLs for the upcoming fishing year(s) as described in paragraph (a)(4) of this section and develop options for consideration by the Council if necessary, on any changes, adjustments, or additions to DAS allocations, closed areas, or other measures necessary to rebuild overfished stocks and achieve the FMP goals and objectives.

* * * * *

(iii) Based on this review, the PDT shall recommend ACLs and develop options necessary to achieve the FMP goals and objectives, which may include a preferred option. The PDT must demonstrate through analyses and documentation that the options they develop are expected to meet the FMP goals and objectives. The PDT may review the performance of different user groups or fleet sectors in developing options. The range of options developed by the PDT may include any of the management measures in the FMP, including, but not limited to: ACLs, which must be based on the projected fishing mortality levels required to meet the goals and objectives outlined in the FMP for the 12 regulated species and ocean pout if able to be determined; identification and distribution of ACLs and other sub-components of the ACLs among various segments of the fishery; AMs; DAS changes; possession limits; gear restrictions; closed areas; permitting restrictions; minimum fish sizes; recreational fishing measures; description and identification of EFH; fishing gear management measures to protect EFH; designation of habitat areas of particular concern within EFH. In addition, the following

conditions and measures may be adjusted through future framework adjustments: Revisions to DAS measures, including DAS allocations (such as the distribution of DAS among the four categories of DAS), future uses for Category C DAS, and DAS baselines, adjustments for steaming time, etc.; modifications to capacity measures, such as changes to the DAS transfer or DAS leasing measures; calculation of area-specific ACLs, area management boundaries, and adoption of area-specific management measures; sector allocation requirements and specifications, including the establishment of a new sector, the disapproval of an existing sector, the allowable percent of ACL available to a sector through a sector allocation, and the calculation of PSCs; sector administration provisions, including at-sea and dockside monitoring measures; sector reporting requirements; measures to implement the U.S./Canada Resource Sharing Understanding, including any specified TACs (hard or target); changes to administrative measures; additional uses for Regular B DAS; reporting requirements; the GOM Inshore Conservation and Management Stewardship Plan; adjustments to the Handgear A or B permits; gear requirements to improve selectivity, reduce bycatch, and/or reduce impacts of the fishery on EFH; SAP modifications; revisions to the ABC control rule and status determination criteria, including, but not limited to, changes in the target fishing mortality rates, minimum biomass thresholds, numerical estimates of parameter values, and the use of a proxy for biomass may be made either through a biennial adjustment or framework adjustment; and any other measures currently included in the FMP.

* * * * *

(b) * * *

(1) * * *

(ii) The WMC shall recommend management options necessary to achieve FMP goals and objectives pertaining to small-mesh multispecies, which may include a preferred option. The WMC must demonstrate through analyses and documentation that the options it develops are expected to meet the FMP goals and objectives. The WMC may review the performance of different user groups or fleet Sectors in developing options. The range of options developed by the WMC may include any of the management measures in the FMP, including, but not limited to: Annual target TACs, which must be based on the projected fishing mortality levels required to meet the goals and objectives outlined in the FMP for the small-mesh multispecies; possession limits; gear restrictions; closed areas; permitting restrictions; minimum fish sizes; recreational fishing measures; description and identification of EFH; fishing gear management measures to protect EFH; designation of habitat areas of particular concern within EFH; and any other management measures currently included in the FMP.

* * * * *

(c) * * *

(1) * * *

(i) After a management action has been initiated, the Council shall develop and analyze appropriate management actions over the span of at least two Council meetings. The Council shall provide the public with advance notice of the availability of both the proposals and the analyses and opportunity to comment on them prior to and at the second Council meeting. The Council's recommendation on adjustments or additions to management measures, other than to address gear conflicts, must come from one or more of the following categories: DAS changes, effort monitoring, data reporting, possession limits, gear restrictions, closed areas, permitting restrictions, crew limits, minimum fish sizes, onboard observers, minimum hook size and hook

style, the use of crucifer in the hook-gear fishery, sector requirements, recreational fishing measures, area closures and other appropriate measures to mitigate marine mammal entanglements and interactions, description and identification of EFH, fishing gear management measures to protect EFH, designation of habitat areas of particular concern within EFH, and any other management measures currently included in the FMP. In addition, the Council's recommendation on adjustments or additions to management measures pertaining to small-mesh NE multispecies, other than to address gear conflicts, must come from one or more of the following categories: Quotas and appropriate seasonal adjustments for vessels fishing in experimental or exempted fisheries that use small mesh in combination with a separator trawl/grate (if applicable), modifications to separator grate (if applicable) and mesh configurations for fishing for small-mesh NE multispecies, adjustments to whiting stock boundaries for management purposes, adjustments for fisheries exempted from minimum mesh requirements to fish for small-mesh NE multispecies (if applicable), season adjustments, declarations, and participation requirements for the Cultivator Shoal Whiting Fishery Exemption Area.

* * * * *

8. In § 648.96, paragraph (a)(3)(ii) is revised to read as follows:

§ 648.96 FMP review, specification, and framework adjustment process.

(a) * * *

(3) * * *

(ii) The range of options developed by the Councils may include any of the management measures in the Monkfish FMP, including, but not limited to: ACTs; closed seasons or closed areas; minimum size limits; mesh size limits; net limits; liver-to-monkfish landings ratios; annual

monkfish DAS allocations and monitoring; trip or possession limits; blocks of time out of the fishery; gear restrictions; transferability of permits and permit rights or administration of vessel upgrades, vessel replacement, or permit assignment; measures to minimize the impact of the monkfish fishery on protected species; gear requirements or restrictions that minimize bycatch or bycatch mortality; transferable DAS programs; changes to the Monkfish Research Set-Aside Program; and other frameworkable measures included in §§ 648.55 and 648.90.

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§ 648.102 [Amended]

9. In § 648.102, paragraph (a)(10) is removed and reserved.

10. In § 648.110, paragraph (a)(1) is revised to read as follows:

§ 648.110 Summer flounder framework adjustments to management measures.

(a) * * *

(1) Adjustment process. The MAFMC shall develop and analyze appropriate management actions over the span of at least two MAFMC meetings. The MAFMC must provide the public with advance notice of the availability of the recommendation(s), appropriate justification(s) and economic and biological analyses, and the opportunity to comment on the proposed adjustment(s) at the first meeting and prior to and at the second MAFMC meeting. The MAFMC's recommendations on adjustments or additions to management measures must come from one or more of the following categories: Adjustments within existing ABC control rule levels; adjustments to the existing MAFMC risk policy; introduction of new AMs, including sub-ACTs; minimum fish size; maximum fish size; gear restrictions; gear requirements or prohibitions; permitting restrictions; recreational possession limit; recreational seasons; closed areas; commercial seasons; commercial trip limits; commercial quota system including

commercial quota allocation procedure and possible quota set asides to mitigate bycatch; recreational harvest limit; specification quota setting process; FMP Monitoring Committee composition and process; description and identification of essential fish habitat (and fishing gear management measures that impact EFH); description and identification of habitat areas of particular concern; regional gear restrictions; regional season restrictions (including option to split seasons); restrictions on vessel size (LOA and GRT) or shaft horsepower; operator permits; any other commercial or recreational management measures; any other management measures currently included in the FMP; and set aside quota for scientific research. Issues that require significant departures from previously contemplated measures or that are otherwise introducing new concepts may require an amendment of the FMP instead of a framework adjustment.

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§ 648.122 [Amended]

11. In § 648.122, paragraph (a)(13) is removed and reserved.

§ 648.142 [Amended]

12. In § 648.142, paragraph (a)(12) is removed and reserved.

§ 648.162 [Amended]

13. In § 648.162, paragraph (a)(9) is removed and reserved.

14. In § 648.167, paragraph (a)(1) is revised to read as follows:

§ 648.167 Bluefish framework adjustment to management measures.

(a) * * *

(1) Adjustment process. After a management action has been initiated, the MAFMC shall develop and analyze appropriate management actions over the span of at least two MAFMC meetings. The MAFMC shall provide the public with advance notice of the availability of both

the proposals and the analysis and the opportunity to comment on them prior to and at the second MAFMC meeting. The MAFMC's recommendation on adjustments or additions to management measures must come from one or more of the following categories: Adjustments within existing ABC control rule levels; adjustments to the existing MAFMC risk policy; introduction of new AMs, including sub-ACTs; minimum fish size; maximum fish size; gear restrictions; gear requirements or prohibitions; permitting restrictions; recreational possession limit; recreational season; closed areas; commercial season; description and identification of EFH; fishing gear management measures to protect EFH; designation of habitat areas of particular concern within EFH; and any other management measures currently included in the FMP. Measures that require significant departures from previously contemplated measures or that are otherwise introducing new concepts may require an amendment of the FMP instead of a framework adjustment.

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15. In § 648.200, paragraph (b) introductory text is revised to read as follows:

§ 648.200 Specifications.

* * * * *

(b) Guidelines. As the basis for its recommendations under paragraph (a) of this section, the PDT shall review available data pertaining to: Commercial and recreational catch data; current estimates of fishing mortality; stock status; recent estimates of recruitment; virtual population analysis results and other estimates of stock size; sea sampling and trawl survey data or, if sea sampling data are unavailable, length frequency information from trawl surveys; impact of other fisheries on herring mortality; and any other relevant information. The specifications recommended pursuant to paragraph (a) of this section must be consistent with the following:

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§ 648.206 [Amended]

16. In § 648.206, paragraph (b)(29) is removed and reserved.

§ 648.232 [Amended]

17. In § 648.232, paragraph (a)(5) is removed and reserved.

18. In § 648.239, paragraph (a)(1) is revised to read as follows:

§ 648.239 Spiny dogfish framework adjustments to management measures.

(a) * * *

(1) Adjustment process. After the Councils initiate a management action, they shall develop and analyze appropriate management actions over the span of at least two Council meetings. The Councils shall provide the public with advance notice of the availability of both the proposals and the analysis for comment prior to, and at, the second Council meeting. The Councils' recommendation on adjustments or additions to management measures must come from one or more of the following categories: Adjustments within existing ABC control rule levels; adjustments to the existing MAFMC risk policy; introduction of new AMs, including sub-ACTs; minimum fish size; maximum fish size; gear requirements, restrictions, or prohibitions (including, but not limited to, mesh size restrictions and net limits); regional gear restrictions; permitting restrictions, and reporting requirements; recreational fishery measures (including possession and size limits and season and area restrictions); commercial season and area restrictions; commercial trip or possession limits; fin weight to spiny dogfish landing weight restrictions; onboard observer requirements; commercial quota system (including commercial quota allocation procedures and possible quota set-asides to mitigate bycatch, conduct scientific research, or for other purposes); recreational harvest limit; annual quota specification process; FMP Monitoring Committee composition and process; description and identification of essential

fish habitat; description and identification of habitat areas of particular concern; overfishing definition and related thresholds and targets; regional season restrictions (including option to split seasons); restrictions on vessel size (length and GRT) or shaft horsepower; target quotas; measures to mitigate marine mammal entanglements and interactions; regional management; any other management measures currently included in the Spiny Dogfish FMP; and measures to regulate aquaculture projects. Measures that require significant departures from previously contemplated measures or that are otherwise introducing new concepts may require an amendment of the FMP instead of a framework adjustment.

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19. In § 648.260, paragraph (a)(1) is revised to read as follows:

§ 648.260 Specifications.

(a) * * *

(1) The Red Crab PDT shall meet at least once annually during the intervening years between Stock Assessment and Fishery Evaluation (SAFE) Reports, described in paragraph (b) of this section, to review the status of the stock and the fishery. Based on such review, the PDT shall provide a report to the Council on any changes or new information about the red crab stock and/or fishery, and it shall recommend whether the specifications for the upcoming year(s) need to be modified. At a minimum, this review shall include a review of at least the following data, if available: Commercial catch data; current estimates of fishing mortality and catch-per-unit-effort (CPUE); stock status; recent estimates of recruitment; virtual population analysis results and other estimates of stock size; sea sampling, port sampling, and survey data or, if sea sampling data are unavailable, length frequency information from port sampling and/or surveys; impact of other fisheries on the mortality of red crabs; and any other relevant information.

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§ 648.299 [Amended]

20. In § 648.299, paragraph (a)(1)(xviii) is removed and reserved.

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